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**COMMENTARY: RE-POSITIONING HUMAN RIGHTS
DISCOURSE ON "ASIAN" PERSPECTIVES**

Sharon K. Hom[†]

I. INTRODUCTION

Within multiple global power configurations mapped along developed/developing countries, and North/South divide, ongoing statist "Asian" human rights debates predominantly line up on an East/West axis, characterized by competing universalism and relativism as core oppositional normative and empirical claims.² The western understanding of universal human rights generally references and emphasizes a vision of civil and political rights shaped by a liberal Western tradition. The challenge of East Asian states to this understanding of human rights has cultural, political, and economic dimensions. Underlying the charges of Western cultural imperialism, is a post-colonialist legacy, and a suspicion that assertions of Western universal human rights are pretexts for intervention in the domestic affairs of other countries. Thus, "what appears, from the Western perspective, to be a noble campaign for universal rights, is interpreted from an Asian perspective, as cultural imperialism."³ The charge of

[†] Professor of Law, CUNY School of Law. J.D., New York University School of Law (1980), Fulbright Professor of Law, China University of Politics and Law (1986-88). I thank Professor Dellapena and the editors of the Buffalo International Law Journal for the invitation to develop this commentary from my informal remarks delivered at the Asian Perspectives on Human Rights Panel, ASIL Annual Meeting, April 6, 1995, and published in 89 ASIL Proc. 146 (1995). Also, thanks to Penny Andrews and Pamela Goldberg for reading and commenting on an early draft and my research assistant Melissa Fraser for helpful manuscript preparation work.

² For a recent article summarizing some of the discussions and papers of a workshop held in Hokone, Japan (June 1995), *The Growth of East Asia and Its Impact on Human Rights*. See Daniel A. Bell, *The East Asian Challenge to Human Rights: Reflections on an East West Dialogue*, 18 HUM. RTS. Q. 641 (1996). In a thoughtful effort to identify relatively persuasive East Asian criticisms of traditional Western

cultural imperialism is also made from the economically smug position of nation-states who are widely touted as “high performance” economies who have engineered the economic miracle of rising GNPs that has apparently made many developed countries nervous.⁴

These engineers of “economic miracles” are in turn criticized by human rights activists and scholars for an ideological subterfuge that attempts to mask their authoritarianism behind culturalist relativism claims and for their assertion of a false dilemma between civil and political rights and economic and social rights.⁵ At the same time that the Asian “economic miracle” is heralded by Asian governments and Western observers, other voices such as NGOs, dissident, religious, labor and other community voices suggest that beneath the “miracles,” there are human costs such as labor rights protection, child labor, industrial safety conditions, poor living conditions, low wages and underpayment, gender based sexual harassment, violence, abuse, and discrimination, that have been rendered invisible or marginalized by statist perspectives. In a recent public petition to the Chinese leaders, a Beijing religious group points to the poverty and suffering of the peasants, and the basic economic and housing problems facing urban residents:

These are all problems that cannot be ignored.
The cries of the impoverished and deprived have
already reached to the heavens, and yet little

approaches, Daniel Bell points to the emerging “new discourse on human rights” reflected in the views of critical intellectuals in East Asia, and argues for drawing upon indigenous cultural traditions as moral authority to persuade East Asians of the value of human rights. However, Bell’s discussion appears to assume a statist perspective and also marginalizes the full range of actors that impact on human rights practice and policy.

³ Michael Freeman, *Human Rights: Asia and the West*, in *HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC* 14 (James T.H. Tang ed., 1995).

⁴ See, e.g., *The East Asian Miracle: Economic Growth and Public Policy*, Oxford University Press for the World Bank (1993)(World Bank report).

⁵ See, e.g., Li Xiaorong, “Asian Values” & the Universality of Human Rights, *CHINA RIGHTS FORUM* 32-36 (1961).

attention is being paid to the sufferings of common people . . . We should be able to live with dignity and our rights should be protected and guaranteed, for a society's wealth belongs to all its people and to respect the honor and ambition of each and every person is an essential condition for the advancement of society!⁶

When judged against a more inclusive assessment of this "representation" on all their citizens, the claims of Asian nation-states to represent the best interests of their citizens is suspect. The invocation of "Asian" culture or a "different" standard as legitimation for a culturally relativist human rights claim is thus suspect, partial, and problematic.

In the previous symposium issue of this Journal,⁷ a number of human rights scholars and a diplomat presented a range of perspectives defining, defending and criticizing various "Asian" approaches to human rights.⁸ In the spirit of further engaging these perspectives, this commentary offers some observations, and suggests several locations from which some of the more dominant statist human rights debates can be fruitfully re-positioned. As specific sources for encouraging more inclusive and human-centered discourses and implementation approaches, I cite the evolution of the human development concept, draw upon insights from domestic and international women's/human rights strategies, and turn up the volume on domestic Chinese women's rights and Chinese dissident voices within and outside China as a reminder of localized sites of struggles. Throughout this commentary, I include references to a range of

⁶ Beijing Protestant Holy Spirit Association, *A Word for the Poor*, CHINA RIGHTS FORUM 14 (1995).

⁷ *Symposium on East Asian Approaches to Human Rights*, 2 BUFF. J. OF INT'L L. 193 (1996).

⁸ I also mark "Asian" to acknowledge its shifting geo-political boundaries. For a history of East Asia, see, e.g., ARTHUR COTTERELL, *EAST ASIA: FROM CHINESE PREDOMINANCE TO THE RISE OF THE PACIFIC RIM* (1993).

constructive strategies for human rights work pursued by diverse Asian NGO groups and international human rights activists and organizations.

II. INTERROGATING "ASIAN" HUMAN RIGHTS DEBATES

Ambassador Bilahari Kausikan,⁹ re-presenting the "East Asian" perspective, echoes previous defenses of Asia's "different standard," and emphasized the governmental and relativist position set forth in the Bangkok Declaration.¹⁰ Acknowledging the universality of human rights, he argues that rights, justice, and order are obtained in different ways at different times in the context of a diversity of historical experiences, cultures, and social and political arrangements for a particular nation. With a gesture towards diversity, he also notes that these debates over the proper approach to human rights is not just between Asia and the West, but also between and within Asian countries.¹¹ In assessing the challenges even with these diversity caveats of Asian governments, it's also important to keep in mind, "when we consider Asian objections to the human rights doctrine on the ground that it entails the domination of Asia by the West, not only that it entails domination of some Asians by others, but also that this domination is not culturally acceptable to those who are dominated."¹² While commending the Governments' recognition of the rights of

⁹ Singapore's Ambassador to the United Nations at the time of the ASIL panel from which the symposium issue developed its articles.

¹⁰ In the Asian Regional preparatory meeting for World Conference on Human Rights which took place in Vienna June 14 - 25, 1993, Asian governments met to develop a common position on human rights for the global agenda. The resulting document, the Bangkok declaration was signed by 40 Asian governments. It recognized the universality of human rights, prioritized economic development rights, and claimed a relativist interpretation approach in the context of historical, cultural and regional particularities. For the text of the Declaration, see Appendix 1 in JAMES T.H. TANG, *HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC* (1995).

¹¹ Bilahari Kim Hee P.S. Kausikan, *An East Asian Approach to Human Rights*, 2 *BUFF. J. OF INT'L L.* 263 (1996).

¹² Freeman, *supra* note 2, at 15.

women, and children, and affirming the universality, indivisibility and interdependence of rights, an NGO response to the Bangkok Declaration also stated: "Yet the Final Draft Declaration, in several significant respects reflects the continued attempts by many governments of the Asia-Pacific region to avoid their human rights obligations, to put the state before the people and to avoid acknowledging their obligations to account for their failures in the promotion and protection for human rights."¹³

Furthermore, there are some tricky slippages in Ambassador Kausikan's defense of Asia's "different standard" that should give one pause. "Asian" as reflected in this official narrative emphasizes "Asian" collective and community notions as basic values and consensus building in opposition to "Western" individualistic rights and adversarial legal institutions and social relations. However, Ambassador Kausikan also points to the diversity of Asian cultures and approaches and criticizes the insensitivity of Western responses for their insensitivity to "the nuances of different Asian" voices. He thus speaks of a monolithic "West" and a monolithic "American" response in particular, within an implicitly polar debate. Yet "Western," like "Asian" is really an idea, a cultural concept of identity, historically situated and contingent. Despite the calls for more complex dialogue and mutual understanding by Asian government leaders, the "West" is thus ironically reified and positioned as a convenient, monolithic oppositional target.

Ambassador Kausikan also marshals the diversity of Western voices and internal critical voices to support the morally superior, common sense, "Asian" position. He is thus invoking the critiques of

¹³ *The Asia-Pacific Governments' final draft Declaration: an NGO response. April 2, 1993, in HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC 211* (James T.H. Tang ed., 1995). The NGO response was signed by representatives of 110 NGOs in the region.

scholars, writers, and news media,¹⁴ non-governmental voices, to support his assertion of a position that privileges the governmental perspective. If one were to seriously argue for sensitivity and the rejection of double standards, then let's all aspire towards a clarity of definitions and sensitivity towards the nuances and diversity in the perceived "other" positions. And if we are to move beyond the current statist gridlock in East Asian human rights discourse, we need to stop implicitly or explicitly conflating the voice of the state, even a paternalistic competent one, with the diversity of voices of the individual citizens of a state, international and local non-governmental organizations, intergovernmental and multilateral bodies. Ambassador Kausikan has suggested that the real question is what works. I would add: What is working --for whom? Who decides what is "working"? Or to put an official Chinese pragmatic spin on it, what "mice" do we want to catch?¹⁵ When there are assertions of "difference," particularly by privileged actors in positions of power, we should ask: who benefits from these assertions of difference? Who asserts these differences/? On whose behalf? Whose voices and experiences are marginalized, rendered invisible to ensure the clarity of an oppositional East/West, universalist/relativist paradigm? What issues are foreclosed by claims of imperialism?¹⁶

In addition to the challenge of engaging the full range of human

¹⁴ See, e.g., *Symposium, On East Asian Approaches to Human Rights*, *supra* note 7, at 270 (cites Rodney Smolla for an absolutist position regarding free speech, and Cass Sunstein for a critique of this position, and Richard Simmons, President of the International Herald Tribune, for his apology to the Singapore government and acceptance of the correct application of Singapore law in the libel suit involving the newspaper).

¹⁵ In a pragmatic assertion of how to decide a correct policy, Deng Xiaoping has stated: "It doesn't matter whether it's a black cat, or a white cat, as long as it catches mice."

¹⁶ For example, prior to the UN Population Conference in Cairo (1994), 114 of the 139 cardinals of the Roman Catholic Church voted unanimously to oppose what they portrayed as "a pervasive feminist presence" at the Conference. They warned that the proposals being presented on abortion and women's rights sponsored by the United States reflected "cultural imperialism." What a brilliant discursive move of appropriation and in 'the name of the Father.' *N.Y. TIMES*, June 15, 1994, at 1.

rights voices on the regional, international, or local level, a dislodging of statist human rights discourse would also require critical attention to the task of identifying appropriate sources for determining the content of a human rights, and the unavoidably culturally over-determined task of "reading" the content for its meaning and intent, perhaps the problem of post-modernist interpretation.¹⁷ Michael Davis has identified as sources for determining aspirations and assessing human rights implementation the following: international declarations, constitutions, legislation and white papers, peace charters, NGO reports, human rights manifestos, academic or legal discourse. Davis suggests a discourse approach that asks who is saying what, for what purposes or values, through what channels, and with what effects. Applying this to China, he concludes there is a disjuncture between rights promised and the actuality of the situation that reflects the "pathology of an underdeveloped constitutional order."¹⁸ He identifies a rectangular relationship between dissidents NGOs, foreign governments and China in human rights lobbying. However, I suggest that it would be helpful to distinguish between dialogue as a process of discovery, and "dialogue" as unilateral positional assertions of already formulated views. China's "discourse with the outside world" discussed by Davis and much of the discourse of nation-states "with" each other, belongs it seems to me in the latter category.

Davis' discourse approach and a focus on process, institutions,

¹⁷ For a collection of essays by Hélène Cixou, Edward Said, Julia Kristeva, Terry Eagleton and others exploring how the de-stabilizing of a concept of a coherent unified self affects strategies to defend human rights see, e.g., *Freedom and Interpretation: The Oxford Amnesty Lectures* (Barbara Johnson, ed., 1992). However, it should be noted that these essays focus implicitly on civil and political rights violations and marginalize the empowering role that contingency plays when considering economic and social rights. After all, it is precisely *because* economic and social structures are constructed and contingent that the possibility and hope lies in their re-construction as more human social orders.

¹⁸ Michael C. Davis, *Human Rights in Asia: China and The Bangkok Declaration*, 2 *BUFF. J. OF INT'L L.* 215, 218-20 (1996).

and values analysis are helpful for moving towards a more dynamic understanding of rights implementation. To build upon this approach, I would suggest more critical attention to a fuller range of international actors such as transnationals, the role of language itself, the role of multiple audiences, the role of the “narrator”/interpreter of these sources and these processes, and the discontinuities between content, the “readings” engendered, and the discursive negotiations that create or legitimate new values and concepts. More analytical attention needs to be paid to language as a site for discursive and political contests. For example, despite similar sounding “vocabulary” of human rights discourse, when one moves beyond an implicit focus on civil and political rights discourse and look at the indivisibility of rights addressed by development policy-makers or women’s rights activists and theorists, it becomes apparent that “vocabulary” is a key site for ideological and political power/empowerment battles. One recent example was the drafting debates surrounding the bracketed language of the draft Platform of Action for the Fourth World Conference on Women and the objections raised by the Holy See, Muslim and Catholic countries to the use of terms like “family,” “sex,” “gender,” to refer to any arrangement other than a heterosexual relationship of marriage.¹⁹

In her symposium essay, Christina Cerna, an attorney with the Organization of American States, focuses on specific speeches of Asian leaders, as useful sources of “explanations” of Asian’s different definition and content of human rights to western and European audiences. Cerna suggests that there appears to be no difference in definitions of human rights between Western and Asian rights and that the differences lies in implementation approaches. In response to the Indonesian governmental assertion of national implementation

¹⁹ See also *ENGLISH-CHINESE LEXICON OF WOMEN AND THE LAW (YINGHAN FUNU YU FALU CIHUI SHIYI)* (Sharon K. Hom & Xin Chunying, 1995) for an example of an attempt to focus on some of the cross-cultural, linguistic, and political translation issues embedded in key human rights/women’s rights terms and concepts. See *infra*, at 12 and notes regarding the evolution of the consensus and understanding of key development concepts and terminology.

approaches, Cerna attempts to suggest a middle ground: only in cases where there is no national implementation should the international community play a role and technical assistance should only be provided to countries with the political will to democratize.²⁰ However, this "reading" also invests the "speaking" of government leaders with more explanatory and communication intent than a more cynical "reading" of geo-political posturing would suggest.

Furthermore, in the context of this international "explanation," and Indonesia's position as chair of the Non-Aligned Movement ("NAM"), certainly the audience is not only Western and European audiences, but also the 108 member states of NAM. And given domestic media coverage, the audience would also include the citizens of these states and the "speaking" of these government leaders would be an encoded message reinforcing the primacy of the government's privileged position as claimed representative of the interests of its citizens. Finally, the balancing of international intervention with national implementation suggested by Cerna side-steps some hard questions: Who and how does this body decide that the national implementation is inadequate or nonexistent? Who and how will "political will to democratize" be measured or identified? For example, in the context of China, an assessment looking exclusively to the political will of the regime in power might lead to the dismissal of consideration of any technical assistance initiatives that might contribute to creating the conditions necessary for democracy. Cerna's approach thus implicitly illustrates the necessity of developing multi-layered approaches that focus on multiple actors and sources of social change.

As historical background for his analysis of the role of legal rhetoric in Chinese social change, Professor Dellapena first recounts a conventional narrative of China's legal tradition, its characteristics and some continuities of this tradition under the Communist rule: the resort to *guanxi* (relationships), a preference for informal settlement

²⁰ Christina M. Cerna, *East Asian Approaches to Human Rights*, 2 BUFF. J. OF INT'L L. 201 (1996).

of disputes,²¹ a Marxist ideological hostility to law as a tool of the elite, and the lack of a specially trained cadre of judges, lawyers, and prosecutors. He then argues that the demands of the student leaders during the 1989 Democracy Movement for democracy, and an end to corruption through a rule of law was ignored by the Western press and misunderstood by China's leaders, both in light of the condition of these "octogenarians" and these traditional Chinese attitudes towards law.²² He concludes by calling for more effective use of rhetoric in communicating our concerns about the rule of law to China's leaders. While I agree that "we in the West" have not done a good job of understanding events in China, this must be viewed in the context of a long history of more than a hundred years of U.S.-China (mis)understanding.²³ In the context of broader Asian debates

²¹ It should be noted that recent work by foreign scholars analyzing records from the Ming-Qing archives has suggested that Chinese were much more litigious and resorted to law suits much more frequently than has been previously understood. See, e.g., Thomas Buoye, *From Patrimony to Commodity: Changing Concepts of Land And Social Conflict in Guangdong Province during the Qianlong Reign (1736-1775)*, 14 *LATE IMPERIAL CHINA* 2 (1993); Nancy Park and Robert Antony, *Archival Research in Qing Legal History*, 14 *LATE IMPERIAL CHINA* 1 (1993); Tahiri Lee, 47 *U. MIAMI L. REV.* 1335 (1993) on law, society and commerce in late Qing and early Republican China. I thank Jim Feinerman and Stan Lubman for pointing these cites out to me.

²² But see, e.g., Margaret Ng, *Are Rights Culture-bound?*, *HUMAN RIGHTS AND CHINESE VALUES* 67 (Michael C. Davis ed., 1995); "One may acknowledge that the concept of rights is generally "alien" to the Chinese tradition in its *past and present state*. But this does not make out the case that rights are alien to Chinese society by *nature*. Nor does it establish that it is therefore legitimate to exclude Chinese society from application of human rights." (emphasis in original). For an argument that the modern concept of human rights is not alien to Chinese soil and discussing four principles, the ideologies of human rights (ren quan zhu yi), tolerance (kuan rong zhu yi), resistance (di kang zhu yi), and neo-constitutionalism (xin xian zheng zhu yi), to the development of a contemporary theory of human rights for Chinese society; see also Du Ganjian and Song Gang, *Relating Human Rights to Chinese Culture: the Four Paths of the Confucian Analects and the Four Principles of a New theory of Benevolence*, *HUMAN RIGHTS AND CHINESE VALUES*, *supra* note 20.

²³ See, e.g., *THE MISSIONARY ENTERPRISE IN CHINA AND AMERICA* (John K. Fairbank ed., 1974); J.A.G. ROBERTS, *CHINA THROUGH WESTERN EYES: THE TWENTIETH CENTURY* (1992); *THE AMERICAN IMAGE OF CHINA* (Benson Lee Grayson ed., 1979);

on human rights approaches, the China case also underscores the importance of understanding the interrelated class, political, and gender aspects of domestic human rights rhetoric and strategies played out on an international screen. What has increasingly become clear is that the bloodshed on June 4 was also the result of a political failure of leadership and tragic strategic mistakes on everyone's part.²⁴

There is also another possible "reading" of the communication between Chinese student leaders and China's leaders. Rather than "misunderstanding" the student demands, perhaps the octogenarians understood very well the "message"²⁵ the students were

and Steven W. Mosher, *CHINA MISPERCEIVED: AMERICAN ILLUSIONS AND CHINESE REALITY* (1990). For Chinese views of American society, see, e.g., Liu Zongren, *TWO YEARS IN THE MELTING POT: FROM BEIJING TO CHICAGO-THE ADVENTURES OF A CHINESE NEWSMAN IN AMERICA* (1984); and *LAND WITHOUT GHOSTS: CHINESE IMPRESSIONS OF AMERICA FROM THE MID-NINETEENTH CENTURY TO THE PRESENT* (R. David Arkush & Leo O. Lee eds., 1989).

²⁴ For observations regarding the class-bias and engendered nature of the student leadership, see, e.g., W.P. Alford, *Making a goddess of democracy from loose sand: Thoughts on human rights in the People's Republic of China*, *HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVE: A QUEST FOR CONSENSUS* 65-80 (An-Na'im ed., 1992) (pointing out that the students were motivated by a mixture of idealism and self-interest and asserted narrow demands that did not invoke the range of freedoms at stake); and Sharon K. Hom, *Female Infanticide in China: The Specter of Human Rights and Thoughts Towards (an)other Vision*, 23 *COLUM. HUM. RTS. L. REV.* 249, 286-90 (1992) (arguing that the failure of the student leaders to include gender issues and analysis resulted in their failure to make the ideological connection between patriarchal violence and the authoritarian crackdown in the square). For a translated collection of some diverse dissident voices, see, e.g., *NEW GHOSTS, OLD DREAMS: CHINESE REBEL VOICES* (1992). For reports of ongoing violations see, e.g., Asia Watch, *Anthems of Defeat: Crackdown in Hunan province 1989-1992* (1992); and *CHINA RIGHTS FORUM*, the Journal of Human Rights in China, a group of Chinese democracy activists based in New York.

²⁵ Framed by Dellapena as demands for democracy and reform through rule of law.

²⁶ Liu surveys past strategies, such as wall posters, journals, leaflets, group discussions, and small demonstrations, prior to the 1989 crackdown and the survival strategies that dissidents developed since then. He identifies a shift since 1992 by dissidents to setting up new organizations with focused political groups, that act openly and legally, and the increasing use of open petition letters signed by individuals. Liu Qing, *Devoted to Democracy and Human Rights: the Development*

communicating. Bunkered behind the compound walls of Zhongnanhai, the Chinese leaders accurately read this message as a challenge to their power, to the autocratic power of the Party, and a demand for a rule of law that would undermine their privileged position outside and above the law. The entrenched efforts of the Party leaders to protect its power at all costs has consequences beyond China's borders. As Liu Qing states so powerfully:

The continued survival and progress of dissidents is not only crucial to the future of Chinese society, but is equally important to the maintenance of international peace and stability. No matter how you look at it, the existence of dissidents in China attests to the diversity of opinion in China; it is no longer the silent obedient society it was considered. Although these voices remain weak, they still serve to hold the autocratic system in check to some extent . . . if some dissidents are allowed to continue their efforts, then the foundation for democracy and human rights in China will gradually be established. The international community must not ignore or forget China's dismal human rights record. After all, it is not a good thing for the world when the rulers of a country of 1.2 billion people with a rapidly expanding economy view the values of democracy and human rights as antiethical to their interests.²⁶

II. CHALLENGES OF THE NEW(OLD) GLOBAL DIS-ORDER

To de-center the state from its current privileged discursive position in human rights debates, we need to open the aperture to bring into political focus a global legacy of rampant militarism,

of the Dissident Movement, CHINA RIGHTS FORUM, Winter 1995, at 4-7.

environmental degradation, and pervasive social and economic inequality.²⁷ One tactic is to re-focus on historical situated human beings, and to foreground the "human" in human rights that can often get lost in geo-political contests between states or in the focus on selective quantitative macro-economic indicators of growth and progress. As the twentieth century draws to a close, contrary to the Western liberal faith in the idea and inevitability of progress, this century has not produced a "modern world" that could be described as peaceful,²⁸ advanced or morally just in human and ecological terms.²⁹ Contrary to conventional media narratives that chart international politics as the business of ambassadors, presidents, legislators, and other government actors, the gendered dimensions of international politics and the intersection of gender, peace, security, and economic justice has been exposed and analyzed.³⁰

²⁷ In 1992, the richest 20% of the world's developed countries had incomes 60 times greater than the poorest 20%. The marginalized, those excluded from the economic and social goods of development represent over 80% of the global community. 1992 UNDP HUMAN DEVELOPMENT REPORT (1992).

²⁸ In 1986, the International Year of Peace, the world military expenditures reached \$900 billion, and by 1991, passed the \$1,000 billion mark. During the period of 1975-85, military expenditures accounted for 40% of the increase in foreign debt of developing countries. JEANNE VICKERS, *WOMEN AND THE WORLD ECONOMIC CRISIS IX* (1993).

²⁹ See, e.g., JEREMY BRECHER AND TIM COSTELLO, *GLOBAL VILLAGE OR GLOBAL PILLAGE: ECONOMIC RECONSTRUCTION FROM THE BOTTOM UP* (1994); BRIAN BURROWS, ALAN MAYNE, DR. PAUL NEWBURY, *INTO THE 21ST CENTURY: A HANDBOOK FOR A SUSTAINABLE FUTURE* (1991); and *GLOBAL TRANSFORMATION AND THE THIRD WORLD* (Robert O. Slater et al eds., 1993).

³⁰ For example, Cynthia Enloe has analyzed the gendered dimensions of this political system. Suggesting that the "personal is international," Enloe exposes the international system as one that relies not only on capital and military weapons, but also on the "control of women as symbols, consumers, workers, and emotional comforters." She suggests that women working in the sex tourism industry, on military bases, as diplomatic wives, as cheap domestic and factory labor, as well as multinationals and governments are all significant international actors. CYNTHIA ENLOE, *MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS: BANANAS, BEACHES, & BASES* (1990). See also J. ANN, *GENDER IN INTERNATIONAL RELATIONS: FEMINIST PERSPECTIVES ON ACHIEVING GLOBAL SECURITY* (1992); *GENDER AND*

In 1990, of the world's 5.3 billion people, 2.63 billion were women; more than half (55%) of the world's women live in Asia.³¹ As the gap between rich and poor widens, the picture of poverty, dislocation, suffering, and inequality clearly has a woman's face. "Women still constitute 70% of the world's poor and two-thirds of the world's illiterates. They occupy 14% of managerial and administrative jobs, 10% of parliamentary seats and 6% of the cabinet positions."³² Of the world's 18 million refugees, some 75-80% of the total is comprised of women and their dependent children.³³ Despite several world conferences,³⁴ the adoption of the Nairobi Forward Looking Strategies, and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW),³⁵ while there has been progress in some regions or countries, across different economic and social systems, women continue to be excluded from access to political and economic decision-making, and suffer due to "domestic" violence, gender-based war crimes, violations of women's human rights and bodily integrity, and political persecution and

INTERNATIONAL RELATIONS (Rebecca Grant and Kathleen Newland eds., 1991).

³¹ THE WORLD'S WOMEN: TRENDS AND STATISTICS 1970-90.

³² 1995 UNDP HUMAN DEVELOPMENT REPORT 14 (1995).

³³ U.S. COMMITTEE FOR REFUGEES, 1993 WORLD REFUGEE SURVEY (1993). This does not include an additional 25 million internally displaced and persons in "refugee-like status." But as Pamela Goldberg points out, exact figures are also difficult to ascertain due to the fluidity of refugees populations, the instability of living conditions of refugees, the lack of resources, and a general disinclination to dis-aggregate statistics on refugee populations by gender or age. Pamela Goldberg, *Where in the World is there Safety for Me?*, WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES (Julie Peters and Andrea Wolper eds., 1995). For discussions of refugee issues and demography of refugee populations, see also SUSAN FORBES-MARTIN, REFUGEE WOMEN (1992).

³⁴ WORLD CONFERENCE ON WOMEN IN NAIROBI (1985), RIO EARTH SUMMIT (1992), WORLD CONFERENCE ON HUMAN RIGHTS IN VIENNA (1993), CAIRO INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT (1994), 1995 WORLD SUMMIT ON SOCIAL DEVELOPMENT IN COPENHAGEN.

³⁵ *Opened for signature*, Dec. 18, 1979, 34 U.N. GAOR, Supp. No. 46, at 193, U.N. Doc. A/34/36 (1979).

discrimination.³⁶

While the statistics cited can not begin to adequately convey the accompanying human suffering and costs of human rights abuses, they do underscore the urgent need for radical change in the long-standing premises of social, economic, and political life and for more effective responses.³⁷ The Platform of Action adopted by the 1995 Fourth World Conference on Women governmental meeting, calls upon governments to take strategic action in the following critical areas of concern: poverty, education, health care, violence against women, economic structures and policies, decision-making at all levels, human rights, media stereotypes and access, management of natural resources and safeguarding of the environment, and the rights of the girl child. The Platform emphasized as in past international statements that the elimination of these abuses are crucial for the future and possibility of achieving a peaceful, stable and equitable world.³⁸

Beginning in 1990, the United Nations Development Programme

³⁶ See, e.g., CHARLOTTE BUNCH ET AL., DEMANDING ACCOUNTABILITY: THE GLOBAL CAMPAIGN AND VIENNA TRIBUNAL FOR WOMEN'S HUMAN RIGHTS (1994); WITHOUT RESERVATION: THE BEIJING TRIBUNAL ON ACCOUNTABILITY FOR WOMEN'S HUMAN RIGHTS (Niamh Reilly ed. 1996); KATARINA TOMASEVSKI, WOMEN AND HUMAN RIGHTS (1993).

³⁷ See, e.g., 1995 UNDP HUMAN DEVELOPMENT REPORT 7 (1995) calling for this fundamental reassessment. In the post-Cold war dis-order, the conflicts, instability, and violence in Third World countries will create tensions (and migration flows) to industrialized countries. "Therefore, in this era of weapons of mass destruction and jet travel, the core of industrialized democracies, despite its best efforts, cannot insulate itself. The new and old disorder in the Third World is destined to have global ramifications that could have a major impact on the future of the industrialized world. But there may be an element of poetic justice in this after all." Mohammed Ayoob, *The New-Old Disorder in the Third World*, 1 GLOBAL GOVERNANCE: A REVIEW OF MULTILATERALISM AND INTERNATIONAL ORGANIZATION 59, 75 (1995).

³⁸ Report of Fourth World Conference on Women (Beijing, 4-15 September 1995). A/Conf. 177/20 17 October 1995. For a summary of the Platform, see Donna Sullivan, *Envisioning Women's Human Rights: What Was Achieved in Beijing?* CHINA RIGHTS FORUM 19 (1995). For an analysis of the Platform in the context of the history of the world's women's rights movement, see CHARLOTTE BUNCH ET AL., BEIJING '95: A GLOBAL REFERENDUM ON THE HUMAN RIGHTS OF WOMEN. Center for Women's Global Leadership on line at: cwgl@igc.org.

(UNDP) has published an annual Human Development Report ranking all countries according to their "level of development." The first report introduced the concept of human development and its measurement. Subsequent reports focused on the role of international trade and markets in development, the introduction of an expanded concept of security to include human security, and the relationship between gender and development. As an alternative to the per capita income indicator used by the World Bank in its annual World Development Report, UNDP introduced a new indicator for these annual reports, the human development index (HDI).³⁹ The HDI has four components: productivity, equity, sustainability, and empowerment of people.⁴⁰ The HDI "measures the average achievement of a country in basic human capabilities. The HDI indicates whether people lead a long and healthy life, are educated and knowledgeable and enjoy a decent standard of living."⁴¹ As the evolving international development policy consensus reflects, "[d]evelopment patterns that perpetuate today's inequities are neither sustainable nor worth sustaining."⁴²

³⁹ Since its introduction, the HDI has also been criticized for its conceptual, methodological, and technical flaws. However, some of these critiques also acknowledge that the UNDP introduced the HDI, intending it to be developed in light of experience, thus leaving it vulnerable to attacks. But even critics conclude, the normative function of the HDI in representing the "broad consensus in development policy" is significant. See, e.g., Irmgard Nübler, *The Human Development Index Revisited* INTERECONOMICS, July/August 1995 at 171-76.

⁴⁰ For a discussion of how the HDI is calculated, see UNDP HUMAN DEVELOPMENT REPORT 1995 at 134-35.

⁴¹ The 1995 UNDP Human Development Report introduces two other indexes: a gender-related development index (GDI) and a gender empowerment index (GEM). The GDI supplements the HDI and focuses on the same variables as the HDI and also disaggregates data by gender to focus on inequality between men and women as well as average achievement of all people. The greater the gender disparities in a given country, the lower its GDI will be compared with its HDI. The GEM focuses on the extent to which women and men are able to actively participate in economic and political life and decision-making. UNDP HUMAN DEVELOPMENT REPORT 73 (1995). For explanation of computation of the GDI, see 130-31.

⁴² UNDP HUMAN DEVELOPMENT REPORT 19 (1994).

In the face of pervasive social injustice, human suffering and environmental destruction created by inter-related global, regional, and domestic factors, and powerful economic and political international actors, Asian nation-states continue to speak and argue in the anachronistic register of the 19th century, while positioning themselves as benevolent patriarchs. When international actors now include multilateral institutions, transnational corporations or multinational corporations, and local, regional and international NGOs, as well as international financial institutions such as the World Bank and the International Monetary Fund, how can a privileged statist human rights narrative be justified in the face of the impact of these powerful non-state actors both on the reconfiguration of the global (dis)order and in re-mapping the human and natural landscape?⁴³

III. HUMAN RIGHTS BEYOND STATE-CENTERED PARADIGMS

The experience of Asian NGOs illustrates some of the opportunities for collaboration between human rights scholars, professionals, and grassroots activists, as well as some of the challenges in working across differences in experience, class and expertise. Since the last decade, there has been an "explosion" of

⁴³ For example, there are over 37,000 transnational corporations ("TNCs") with over 170,000 foreign affiliates, that control about 70% of products in international trade. They play a powerful role in light manufacturing in export processing zones in the developing world where over 65%, more than 2.6 million, of the workers are women working in often poor working conditions. They produce 95% of the food manufactured in the U.S. And dominate the food agribusiness industry in the North. WEDO, *CODES OF CONDUCT FOR TRANSNATIONAL CORPORATIONS: STRATEGIES TOWARD DEMOCRATIC GLOBAL GOVERNANCE* 2-5 (1995). For an interesting discussion of the impact of non-state actors on world politics and foreign policies, and a critique of the limits of the statist approach, see THOMAS RISSE-KAPPEN, ET AL., *BRINGING TRANSNATIONAL RELATIONS BACK IN: NON-STATE ACTORS, DOMESTIC STRUCTURES AND INTERNATIONAL INSTITUTIONS* (1995).

Asian NGOS,⁴⁴ both quantitatively and qualitatively, that address the problems of militarization, intolerable poverty, permanent environmental degradation, the exploitation of women, children and religious or ethnic minorities, and the abuses of prevailing authoritarian regimes.⁴⁵ Clarence J. Dias has identified three strands of the Asian human rights movement: struggles against authoritarian political regimes; delivery of basic services and education programs to the rural poor; and focus on national development programs. Although these activists did not explicitly start out with a human rights agenda, they quickly turned to human rights activism as a means to (1) empowerment of the impoverished; (2) securing accountability of those who wield power and control over resources; (3) participation of the oppressed; and (4)

⁴⁴ In the U.N. framework, an NGO is any international organization not established by international intergovernmental agreement, but can include "organizations that accept membership designated by government authorities, provided such membership does not interfere with the free expression of views of the organization." EDMUND JAN OSMANSZYK, *ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS* (Taylor and Francis eds., 1990). The Union of International Associations (UIA) maintains a registry of NGOs in accordance with UN recommendations and ECOSOC criteria. However, UIA has stated that "(a) clear and unambiguous theoretically acceptable definition of international NGOs remain to be formulated." UIA, *YEARBOOK OF INTERNATIONAL ORGANIZATIONS* App. 5, sec. 2.2 (1988/89). Some of the characteristics that have been identified as NGO characteristics include independence and autonomy from governments, grassroots base of support and activities, non-governmental source of funding, and a not-for-profit purpose. While there have been recent divisive international debates over the definition of an NGO, I have discussed the limits of current definitions and suggest that in the context of China, we need to focus on the instrumentalist and contextualized applications of a proposed definition and keep in the foreground a dialogue shaping an NGO agenda as distinct from competing international governmental agendas. Sharon K. Hom, *Listening for Diversity: Broaden Debate Among Rights Groups in the Round-Up to 1995*, CHINA RIGHTS FORUM, Winter 1993, at 12-15.

⁴⁵ For a listing of local, national, and regional NGOS or people's organizations (groups formed by sectors of society, e.g. peasants, laborers, fisher folk, women), see, e.g., ASIAN REGIONAL RESOURCE CENTRE FOR HUMAN RIGHTS EDUCATION (ARRC) (1993) (*A Directory of Asian Organizations Related to Human Rights Education Work*).

asserting values such as social and ethical values that should underlie res-structuring of asocial orders.

Dias also identifies three main categories of people involved in the human rights activism in Asia: intellectuals, professionals, and activists. He describes the approach of the legal elite of working within the existing law in "test cases" and in "public interest litigation" to redress violations of civil and political rights, and the tensions of this liberal approach with the goals of activists who view reform as part of a social change and structural transformation process. Specific action strategies that intellectuals, and professionals, and activists collaborated upon include campaigns such as the Infant Formula campaign; international coalitions such as the International Coalition for Justice in Bhopal; solidarity and protest organizations such as Greenpeace; lobbying groups such as the Asia Pacific Forum on Women, Law and development; regional networks such as the Asian Regional Council on Human Rights; and social movements such as the women's movement, the environment movement, and the consumer movement.⁴⁶

Like intellectuals and political dissidents advocating human rights in Asia, Chinese dissidents, and intellectuals⁴⁷ are and will continue to be key actors in human rights advocacy and democracy reform in China.⁴⁸ In order to identify possible opportunities for alliance-building across different political systems and cultural contexts in working with domestic Chinese groups, we need to understand the

⁴⁶ Clarence J. Dias, *The Role of Human Rights NGOs in Asia*, HUMAN RIGHTS OF MIGRANT WORKERS: AGENDA FOR NGOs, at 13-16 (1993).

⁴⁷ For a summary of the debates and history of Chinese human rights research and theoretical work, see Zhou Wei, *The Study of Human Rights in the People's Republic of China*, HUMAN RIGHTS AND INTERNATIONAL RELATIONS IN THE ASIA PACIFIC, *supra* note 2, at 83-96.

⁴⁸ See, BRINGING DOWN THE GREAT WALL: WRITINGS ON SCIENCE, CULTURE, AND DEMOCRACY IN CHINA (Fang Lizhi ed. & James H. Williams trans., 1990); LIU BINYIN ET AL., "TELL THE WORLD" WHAT HAPPENED IN CHINA AND WHY (Henry L Epstein trans., 1990); Andrew Nathan, *China's Crisis: Dilemmas of Reform and Prospects for Democracy* (1990); and SUZANNE OGDEN et al., *CHINA'S SEARCH FOR DEMOCRACY: THE STUDENT AND MASS MOVEMENT OF 1989* (1992).

context, obstacles, and opportunities facing Chinese NGOs or human rights/women's advocates attempting organizational strategies situated within a politically authoritarian regime.⁴⁹ In trying to understand the role of Chinese NGOs in the context of an emerging civil sector in China,⁵⁰ a rigid model of NGOs would not address the complex relationship between domestic and international NGOs and the tensions that can arise in developing multiple and simultaneous local, regional and global intervention strategies. Under the legal framework established by the 1989 Regulations for the Registration and Management of Social Groups, associations, scholarly groups, federations, research associations, foundations, and promotional groups must register and be operationally linked to a governmental administrative unit (*guakao danwei*). The search for Chinese "NGOs" that fit the characteristics of foreign NGOs is thus problematic given this restrictive and pervasive oversight and supervision framework.

An examination of the role of the All China Women's Federation (ACWF) within China and in the international arena during the preparatory process leading up to the 1995 Fourth World Conference on Women provides some interesting insights regarding the role of Chinese NGOs and their relationship to international human rights approaches. As the mass organization arm of the Party that acts to implement Party policies and to inform Party decision-making on the needs and interests of women, the ACWF (*Fulian*), occupies a difficult position in carrying out its dual functions. The ACWF serves

⁴⁹ Sharon K. Hom & Sophia Woodman, *Going to Beijing With Open Eyes: Preparing for the World Conference on Women*, CHINA RIGHTS FORUM, Spring 1995 at 18-21; SHARON K. HOM, ECONOMIC REFORM AND SOCIAL AND ECONOMIC RIGHTS IN CHINA: STRATEGY BRAINSTORMING ACROSS CULTURES, FROM BASIC NEEDS TO BASIC RIGHTS: WOMEN'S CLAIMS TO HUMAN RIGHTS 147-51 (Margaret A. Schuler ed.).

⁵⁰ A recent study of the rising number of Chinese foundations suggests that a range of NGOs with Chinese characteristics is emerging and that these NGOs will contribute to the development of an autonomous civil sector, but they will need to develop more transparency and accountability in its financing structures, processes, and funding decisions. *The Rise of Nongovernmental Organizations in China*, National Committee on U.S.-China Relations, Inc., Policy Series 8 (1994).

both as the propaganda arm of the Party, and the "service" counseling and advocacy arm for women. At the same time, it is increasingly clear to outside observers that the ACWF does not speak with a monolithic voice for "Chinese women", nor is it free from internal criticism.⁵¹ One of the current challenges facing the ACWF is the articulation and development of a role for itself as an "independent" women's NGO despite its Party affiliation. In this process, the ACWF is negotiating the perceptions of international NGOs, the diverse perspectives and roles of provincial and local fulians⁵² and the theoretical assessments emerging from the growing number Chinese women's studies centers,⁵³ and its own relationship to the various organs of state power.

As the preparatory process leading up to and the Fourth World Conference and NGO Forum reflected, Chinese women found themselves in exciting and difficult positions. Within the context of existing Chinese political, legal, and cultural constraints, Chinese women had to negotiate the tensions and opportunities of international human rights exchanges. For many of them, this was the first time they heard the expression, "women's rights are human rights." It was also the first opportunity for many Chinese women to network with counterparts from all over the world. Their silences during the Conference and the Forum, as well as their voices, and their reflections provide important lessons for the possibility and difficulties of building networks and human rights strategies that draw upon on international approaches.

⁵¹ See, e.g., LI XIAOJIANG, *Economic Reform and the Awakening of Chinese Women's Consciousness*, ENGENDERING CHINA 360-82.

⁵² For example, the Shanghai Fulian has recently developed its own set of enterprises (a clothing boutique store, a hotel, and conference facilities) as an independent source of income that might support expanded activities. Interview with Shanghai Fulian (July 1994).

⁵³ See, e.g., Tao Chen, *Zhonguo Funu Jiefang Yundong Zouchienlema? [Is the Chinese Women's Movement Moving Forward?]* 6 TANSSUO YU ZHENGMING 23-27 (1993); Tao Jianmin, *Shehui Jinbu yu Funu Jiefang [Social Progress and Women's Liberation]* 6 TANSSUO YU ZHENGMING 28-32 (1993).

One Chinese journalist, Chuanrenyuan, noted:

Consciously or unconsciously, they put themselves into the role of official spokespeople, enthusiastically explaining the 'great progress made by women of our country' and arguing with 'certain foreigners with ill-intentions.' China lacks an understanding of human rights; it is even more lacking in comprehension of feminism. Today, we should not only struggle with the authorities to achieve the human rights and women's rights that we need, but also with the men and women who are permeated by several thousand years of feudal culture and decades of Party culture.⁵⁴

Chuanrenyuan concludes with the observation that more women in China now dare to openly call themselves "feminists."⁵⁵ As Chinese women "cross" with greater frequency literal or symbolic national borders, the official efforts to enclose Chinese women within nationalistic discourses have been only partially successful despite the public acceptance by women of spokesperson roles during the Conference. As reflections by Chinese women underscore, no matter what the present obstacles, the opening up of discursive spaces during this recent period and the seizing of opportunities presented by women to engage in activist research, to use the newly established women's centers to build a supportive place for investigation of social problems, to create networks within and outside of China, the rich memories of new friends, exposure to new ideas and approaches, will

⁵⁴ Chuanrenyuan, *Overshadowing feminism: thoughts on the Beijing Women's Conference* CHINA RIGHTS FORUM Winter 1995 at 16-18.

⁵⁵ The history of Chinese women's encounter with western feminism and the problematized discursive position of feminism in China dates back to the New Culture Movement of the early twentieth century. Translations for feminism includes nuquanzhuyi, (associated negatively with bourgeois class values and western feminism), and nuxing zhuyi, (appearing since the 1980's). Nuxing zhuyi has less political, but more biological connotations. ENGLISH-CHINESE LEXICON OF WOMEN AND THE LAW, *supra* note 19, at 130.

have ongoing impact that will be difficult to measure in the limited time frames of the present.⁵⁶ I am not suggesting gender analysis or feminism (in whatever formulation), as the exclusive or primary framework for a Chinese human rights analysis. However, because gender issues remain under-theorized in Chinese domestic human rights discourse, I suggest a gender perspective to call for more work on integrating gender issues theoretically and strategically into overall human rights strategies.⁵⁷

However, it is not only the discourse of nation-states that needs to be critically challenged. In the wake of the widespread attention and self-examination of the 50th anniversary of the United Nations, the history of its global stewardship and international governance has also been criticized. Peter Vale has argued that we do not need more reformist thinking. Instead, he urges us to ask "first order questions" -- questions necessary to re-conceptualizing the very nature of international society and a new role for the United Nations.⁵⁸ Like Chandra Mohanty and other Third World feminists,⁵⁹ Vale calls for a re-conceptualization of the discursive maps that shape the definitions and contexts of global political struggles. He points to the contingency of discursive and material constructs and argues for the possibility of our transforming existing discourses and material realities;

The structures that dominate our lives, including
our approach to the U.N., are only as permanent

⁵⁶ See, e.g., FORD FOUNDATION, REFLECTIONS & RESONANCES: STORIES OF WOMEN INVOLVED IN INTERNATIONAL PREPARATORY ACTIVITIES FOR THE 1995 NGO FORUM ON WOMEN (1995).

⁵⁷ See, e.g., AMNESTY INTERNATIONAL, HUMAN RIGHTS IN CHINA'S REPORT PREPARED FOR FOURTH WORLD CONFERENCE ON WOMEN (1995); AMNESTY INTERNATIONAL, WOMEN IN CHINA: IMPRISONED AND ABUSED FOR DISSENT (1995).

⁵⁸ Peter Vale, *Engaging the World's Marginalized and Promoting Global Change: Challenges for the United Nations at Fifty*, 36 HARV. INT'L L. J. 283 (1995).

⁵⁹ Chandra Talpade Mohanty, *Cartographies of Struggle: Third World Women and the Politics of Feminism*, THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM 1-50 (Chandra Talpade Mohanty et al. eds., 1991).

as we make them. Crucial features of life, such as democracy, nations, sovereignty, capitalism, the Cold War, and even the U.N. have concrete manifestations, but are simply constructs of the human mind. They are but theories, which at times certainly make us, but are also made by us.⁶⁰

In discursive human rights debates, as Vale suggests, we need to continue to question the inevitability of dominant narratives, constructs and the circumstances that give rise to these narratives. As cultures are erased and created by globalization and emerging cultures are contested and negotiated, what does it mean to speak monolithically of an “Asian” culture even if tempered by nods to diversity? What country entering “modernity” has escaped the imprints of the imperialist and colonialist enterprise? How can we re-envision the critical negotiation of cultures in ways that transcend essentialist or nativist claims of “tradition” and that address this complex colonialist history? Is it possible to expose the opportunistic mis-use of “tradition” by authoritarian power-holders and at the same time reappropriate “tradition” as one source of identity and community? What kinds of multiple and simultaneous local, regional, and international strategies can be explored?

I raise these questions not to try to address them in this brief commentary, but to suggest examples of questions that resist neat discursive frameworks such as tradition/modernity, West/East native/foreign, and local/international and that shifts the focus beyond a privileged statist perspective. As we theorize and implement alternative approaches to human rights work, we need to keep all the diverse global and local actors in our strategic line of vision. In this brief review of some aspects of these Asian human rights debates, I have pointed to the difficulties of reading across ideological, political, cultural terrain, suggested the importance of opening the aperture on the range of international human rights actors, and urged a more

⁶⁰ Vale, *supra* note 58, at 288-89.

critical interrogation of the discursive strategies and statist assumptions of human rights debates.

In the face of assertions of the diversity of history, culture, language, and political and economic systems, by governmental and non-governmental voices, we are still left with the challenges and opportunities of negotiating the twin dangers of the universalist-edging-into-imperialist position and a morally bankrupt absolute relativism. Yet we cannot position ourselves safely outside of this human rights landscape as neutral observers or disinterested scholars.⁶¹ The intellectual and ethical-political challenge facing human rights scholars is to create more empowering discursive spaces, and to contribute to more human-centered structures and processes that will promote social and economic justice. Human rights are ultimately about justice, and the contest continues over content, meaning and implementation. Against a backdrop of global human rights debates shaped by the geo-political power maneuvers of nation-states and transnationals, justice is often manipulated or marginalized. "Politics is driven by power, more or less constrained by justice. Power works by pretending to be just. In thinking about human rights, we should distinguish between what justice requires and what those with power demand."⁶² Human rights are too important to be

⁶¹ As a Chinese-American legal scholar and law teacher working in the material west, I situate myself partially in what Tu Weiming has described as "Cultural China", that is China as inclusive of three symbolic universes, the mainland China, Taiwan, Hong Kong, Chinese communities overseas, and scholars elsewhere in the world interested in China. Tu Wei-wing, *Cultural China: The Periphery as the Center*, THE LIVING TREE: THE CHANGING MEANING OF BEING CHINESE TODAY 1, 13-14 (Tu Wei-ming ed., 1994). Although I do not share Tu's optimism that these periphery sites outside China might serve an alternative reference points for the mainland Communist system nor as primary sites for the development of an autonomous intellectual force within China, I do view the expansion of symbolic, imagined, and horizontal communities of struggle as a useful strategy for negotiating the increasing porous cultural, economic and political boundaries of nationhood. Hom, *supra* note 49.

⁶² Freeman, *supra* note 3, at 23. In quoting Freeman, I am using "power" in this context to refer to the power of governments, multinationals, and other institutions of concentrated economic and political power. I distinguish this from the inherent power in each individual, or every civil or community group to challenge these dominant

left exclusively to governments.

structures and to re-envision other social orders.